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10/701,052	11/03/2003	Charles A. Byrne	MAMMOTH-44436	5529

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EXAMINER

DANIELS, MATTHEW J

ART UNIT	PAPER NUMBER
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1732

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/701,052	Applicant(s) BYRNE, CHARLES A.	
	Examiner Matthew J. Daniels	Art Unit 1732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-5 and 7-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-5 and 7-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Please note that this application has been transferred to Matthew J. Daniels.

Response to Amendment

2. Applicant's amendment filed 20 February 2007 has been entered. Claims 1, 3-5 and 7-25 are pending in the instant application.

Claim Rejections - 35 USC § 112

3. Rejections set forth previously under this section are withdrawn in view of the amended claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 5 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cooper (US Patent No. 6,174,214) in view of Ou (US Patent No. 6,500,082).

Cooper ('214) teaches the basic claimed process for making a flying disc (animal chew toy) including, providing at least one rubber sheet and at least one fabric sheet (floss mesh sheet), cutting said rubber and fabric sheets having a predetermined shape, positioning said rubber sheet

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over said fabric sheet to form a stack and bonding said rubber and fabric sheets together to form said flying disc (see Figure 2). It is submitted that a flying disc is an animal chew toy.

Regarding claim 1, Cooper ('214) does not teach a compression molding process for bonding the rubber and fabric sheets. Ou ('082) teaches a compression molding process for making a rubber/fabric composite including, providing at least one rubber sheet, cutting said rubber sheet having a predetermined shape, providing at least one fabric sheet (floss mesh sheet), cutting said fabric sheet, superimposing said rubber and fabric sheets to form a stack, placing said stack in a mold and molding said stack under heat and pressure to form said fiber/rubber composite (see col. 3, lines 33-60). Ou ('082) teaches providing a plurality of alternating fabric and rubber sheets (see col. 4, lines 1-14). Therefore, it would have been obvious for one of ordinary skill in the art to make a flying disc as taught by Cooper ('214) using the process of Ou ('082) because of known advantages that compression molding provides such as ease of operation, known technology and also because both references teach similar materials and structures, hence suggesting the process of Cooper ('214) to make the structure of Ou ('082).

In regard to claim 5, Ou ('082) teaches a polyester and nylon fabric (see col. 5, lines 23-26). Therefore, it would have been obvious for one of ordinary skill in the art to use a polyester or nylon fabric as taught by Ou ('082) in the flying disc (animal chew toy) of Cooper ('214) because of known advantages that nylon provides such as increased strength and durability, hence providing for an improved product.

Specifically regarding claim 14, Ou ('082) teaches providing a plurality of alternating fabric and rubber sheets (see col. 4, lines 1-14). Therefore, it would have been obvious for one of ordinary skill in the art to provide providing a plurality of alternating fabric and rubber sheets as

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taught by Ou ('082) in the flying disc (animal chew toy) of Cooper ('214) because Ou ('082) specifically teaches that the stiffness of the resulting fabric/rubber composite can be controlled by the number of rubber and fabric sheets, hence providing for an improved product and increasing process versatility by permitting the making of a wide variety of products with differing stiffness depending on the end use desired.

5. Claims 3-4, 15-16 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cooper (US Patent No. 6,174,214) in view of Ou (US Patent No. 6,500,082) and in further view of Willinger (US Patent No. 6,622,659 B2).

Cooper ('214) in view of Ou ('082) teaches the basic claimed process as described above.

Regarding claims 3-4 and 21, Cooper ('214) in view of Ou ('082) teach a material that would function as a floss between first and second layers. In particular, Ou ('082) teaches providing a plurality of alternating fabric and rubber sheets (see col. 4, lines 1-14). Cooper and Ou do not teach a tire rubber material mixed with carbon black. Willinger ('659) teaches a pet chew toy made from a tire rubber material mixed with carbon black (see col. 6, lines 36-43). Therefore, it would have been obvious for one of ordinary skill in the art to have used a tire rubber material mixed with carbon black as taught by Willinger ('659) to make the pet chew toy by the process of Cooper ('214) in view of Ou ('082) because, Willinger ('659) teaches that such a material provides for hot and cold resistance and resilience approaching that of natural rubber, hence providing for an improved product.

6. Claims 12 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cooper (US Patent No. 6,174,214) in view of Ou (US Patent No. 6,500,082) and in further view of Edwards (US Patent No. 4,513,014).

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Cooper ('214) in view of Ou ('082) teaches the basic claimed process as described above.

Regarding claims 12 and 20, Cooper ('214) in view of Ou ('082) do not teach adding a scent to the rubber material. Edwards ('014) teaches a polyurethane pet chew toy having a liquid scent added prior to molding said pet chew toy (see Abstract, col. 6, lines 28-30 and col. 7, lines 43-58). Therefore, it would have been obvious for one of ordinary skill in the art to have added a scent as taught by Edwards ('014) to make the pet chew toy by the process of Cooper ('214) in view of Ou ('082) because, Edwards ('014) teaches that adding a scent provides for improved taste/aroma that is pleasing to the pet, hence providing for an improved product.

7. Claims 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cooper (US Patent No. 6,174,214) in view of Ou (US Patent No. 6,500,082) and in further view of Willinger (US Patent No. 6,622,659 B2) and Edwards (US Patent No. 4,513,014).

Cooper ('214) in view of Ou ('082) and in further view of Willinger ('659) teaches the basic claimed process as described above.

Regarding claim 25, Cooper ('214) in view of Ou ('082) and in further view of Willinger ('659) do not teach adding a scent to the rubber material. Edwards ('014) teaches a polyurethane pet chew toy having a liquid scent added prior to molding said pet chew toy (see Abstract, col. 6, lines 28-30 and col. 7, lines 43-58). Therefore, it would have been obvious for one of ordinary skill in the art to have added a scent as taught by Edwards ('014) to make the pet chew toy by the process of Cooper ('214) in view of Ou ('082) and in further view of Willinger ('659) because, Edwards ('014) teaches that adding a scent provides for improved taste/aroma that is pleasing to the pet, hence providing for an improved product.

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8. Claims 7, 9-11, 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cooper (US Patent No. 6,174,214) in view of Ou (US Patent No. 6,500,082) and in further view of Markham *et al.* (US Patent No. 5,904,118).

Cooper ('214) in view of Ou ('082) teach the basic claimed process as described above.

Regarding claims 7, 9-11, 17 and 19, Cooper ('214) in view of Ou ('082) do not teach a pet chew toy having a rope and a buoyant insert made from a closed cell foam inserted into a cavity of said toy. Markham *et al.* ('118) teach a molded pet chew toy having a rope attached and a buoyant insert made from a closed-cell foam inserted into a cavity of said toy (see col. 2, lines 6-16 and Figure 6). Therefore, it would have been obvious for one of ordinary skill in the art to have formed a pet chew toy having a rope and a buoyant insert made from a closed cell foam inserted into a cavity of said toy as taught by Markham *et al.* ('118) using the process of Cooper ('214) in view of Ou ('082) because, Markham *et al.* ('118) teach that such a pet toy provides for an improved product by permitting increased visibility when pets play in the water.

9. Claims 8 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cooper (US Patent No. 6,174,214) in view of Ou (US Patent No. 6,500,082) and in further view of Markham (US Patent No. 5,832,877).

Cooper ('214) in view of Ou ('082) teach the basic claimed process as described above.

Regarding claims 8 and 18, Cooper ('214) in view of Ou ('082) do not teach a pet chew toy having an animal treat retained in a cavity therein. Markham ('877) teaches an animal chew toy having animal treats retained in a cavity therein (see Abstract and Figure 3). Therefore, it would have been obvious for one of ordinary skill in the art to have formed a pet chew toy having an animal treat retained in a cavity therein as taught by Markham ('877) using the process

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of Cooper ('214) in view of Ou ('082) because, Markham ('877) teach that such a pet toy provides for increased life by allowing the pet to use said toy for an increased period of time, hence providing for an improved product.

10. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cooper (US Patent No. 6,174,214) in view of Ou (US Patent No. 6,500,082) and in further view of Richards (US Patent No. 5,020,808).

Cooper ('214) in view of Ou ('082) teach the basic claimed process as described above.

Regarding claim 13, Cooper ('214) in view of Ou ('082) do not teach a tire shaped animal chew toy. Richards ('808) teaches a tire shaped flying disc (animal chew toy) (see Figure 1). It is submitted that a flying disc (animal chew toy) has a diameter of 6-10 inches. Therefore, it would have been obvious for one of ordinary skill in the art to make a tire shaped flying disc (animal chew toy) as taught by Richards ('808) using the process of Cooper ('214) in view of Ou ('082) because Richards ('808) teaches that an annular (tire) shape provides for improved performance, hence providing for an improved product.

11. Claims 22 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cooper (US Patent No. 6,174,214) in view of Ou (US Patent No. 6,500,082) and in further view of Willinger (US Patent No. 6,622,659 B2) and Markham *et al.* (US Patent No. 5,904,118).

Cooper ('214) in view of Ou ('082) and in further view of Willinger ('659) teach the basic claimed process as described above.

Regarding claims 22 and 24, Cooper ('214) in view of Ou ('082) and in further view of Willinger ('659) do not teach a pet chew toy having a rope and a buoyant insert made from a closed cell foam inserted into a cavity of said toy. Markham *et al.* ('118) teach a molded pet

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chew toy having a rope attached and a buoyant insert made from a closed cell foam inserted into a cavity of said toy (see col. 2, lines 6-16 and Figure 6). Therefore, it would have been obvious for one of ordinary skill in the art to have formed a pet chew toy having a rope and a buoyant insert made from a closed cell foam inserted into a cavity of said toy as taught by Markham *et al.* ('118) using the process of Cooper ('214) in view of Ou ('082) and in further view of Willinger ('659) because, Markham *et al.* ('118) teach that such a pet toy provides for an improved product by permitting increased visibility when pets play in the water.

12. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cooper (US Patent No. 6,174,214) in view of Ou (US Patent No. 6,500,082) and in further view of Willinger (US Patent No. 6,622,659 B2) and Markham (US Patent No. 5,832,877).

Cooper ('214) in view of Ou ('082) and in further view of Willinger ('659) teach the basic claimed process as described above.

Regarding claim 23, Cooper ('214) in view of Ou ('082) and in further view of Willinger ('659) do not teach a pet chew toy having an animal treat retained in a cavity therein. Markham ('877) teaches an animal chew toy having animal treats retained in a cavity therein (see Abstract and Figure 3). Therefore, it would have been obvious for one of ordinary skill in the art to have formed a pet chew toy having an animal treat retained in a cavity therein as taught by Markham ('877) using the process of Cooper ('214) in view of Ou ('082) and in further view of Willinger ('659) because, Markham *et al.* ('118) teach that such a pet toy provides for increased life by allowing the pet to use said toy for an increased period of time, hence providing for an improved product.

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13. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cooper (US Patent No. 6,174,214) in view of Ou (US Patent No. 6,500,082) and Richards (US Patent No. 5,020,808), and further in view of Mitchell (US Patent No. 4,906,007) and Farhi (US Patent No. 3673731).

Cooper ('214) in view of Ou ('082) and in further view of Richards ('007) teach the basic claimed process of Claim 13 as described above.

Regarding Claim 26, Cooper in view of Ou and Richards are silent to the sidewalls extending inwardly in to define generally aligned central apertures and a U shaped cross section and the tread design. However, Farhi teaches that a disc having generally aligned central apertures (Fig. 2, item 16, 18) and a U-shape section with sidewalls (Fig. 2, item 14). Mitchell teaches an outer periphery having a design that is interpreted to be a tread design formed over at least a portion thereof (Fig. 6, items 30 and 34), and defining a central aperture (Fig. 6, item 22). It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the methods of Farhi and Mitchell into that of Cooper, Ou, and Richards in order to provide (a) improved airfoil configuration (Farhi, 2:65) and (b) a gripping portion and aerodynamic shape (Mitchell), which would have been desirable to Cooper.

14. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cooper (US Patent No. 6,174,214) in view of Ou (US Patent No. 6,500,082) and in further view of Mitchell (US Patent No. 4,906,007) and Farhi (US Patent No. 3673731).

Cooper ('214) in view of Ou ('082) teaches the basic claimed process of Claim 14 as described above.

Regarding Claim 27, Cooper in view of Ou and Richards are silent to the sidewalls extending inwardly in to define generally aligned central apertures and a U shaped cross section and the tread design. However, Farhi teaches that a disc having generally aligned central apertures (Fig. 2, item 16, 18) and a U-shape section with sidewalls (Fig. 2, item 14). Mitchell teaches an outer periphery having a design that is interpreted to be a tread design formed over at least a portion thereof (Fig. 6, items 30 and 34), and defining a central aperture (Fig. 6, item 22). It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the methods of Farhi and Mitchell into that of Cooper, Ou, and Richards in order to provide (a) improved airfoil configuration (Farhi, 2:65) and (b) a gripping portion and aerodynamic shape (Mitchell), which would have been desirable to Cooper.

Response to Arguments

Applicant's arguments filed 20 February 2007 have been fully considered but they are not persuasive or are moot in view of the new grounds of rejection. The arguments appear to be on the following grounds:

- a) Applicant asserts that the Cooper reference does not disclose the steps of providing a layer of synthetic fibers, and creating a multi-layer rubber and synthetic fiber sheet. Cooper provides two fabric sheets on the outside of the disc to provide the disc with stability, improved flight, performance, and handling. In the claimed invention the fibers are embedded within to provide strength and a floss characteristic.
- b) The teachings of Cooper and Ou are not analogous to one another.

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- c) The rejection suffers from improper hindsight.
- d) There is no motivation to combine the references as cited.
- e) Molding fabric sheets into the central neoprene core would destroy the invention of Cooper.
- f) There is no teaching or suggestion of the general shape and size of size of an animal chew toy.
- g) There is no motivation to combine Willinger, and doing so could negatively impact the flexible properties of the Cooper waterproof flying disc.
- h) Edwards teaches a surface-migrating flavoring, not a scent.
- i) There is no motivation to combine Markham with Cooper and Ou. Attaching a rope to a flying disc would destroy its aerodynamic abilities and utility. There would be no object or purpose of putting buoyant insert comprised of closed cell foam into an article made of closed cell foam. The Examiner uses hindsight in picking and choosing elements.
- j) Richards provides no tire, and there is no teaching of the configuration of Claims 26 and 27.

These arguments are not persuasive for the following reasons:

- a) In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).
- b) The teachings are at least within the same field of endeavor, both being directed at toys.
- c) In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in

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a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

d) Motivation was provided in the rejection and does not appear to have been particularly argued. Thus, it is still believed to be valid.

e) The Examiner respectfully disagrees, and asserts that fabric sheets in the interior would provide improved strength and durability, and that this motivation would be recognized in the art.

f) All of the references cited provide articles that could be used to fulfill the claimed intended use.

g) Motivation was provided in the rejection and does not appear to have been particularly argued. Thus, it is still believed to be valid. The arguments of counsel cannot take the place of evidence in the record. Evidence may be necessary to support Applicant's position regarding the destruction of the invention by the combination in this case.

h) It is asserted that the flavoring Edwards is also an aromatic flavoring, or that an aromatic flavoring is suggested (2:15-16).

i) Motivation was provided in the rejection and does not appear to have been particularly argued. Therefore, it is still believed to be valid. The Examiner respectfully disagrees that there would be any destruction of the utility or invention by attachment of a rope. The Examiner cites Englehardt (USPN 3802117), Leibowitz (USPN 3935663), and Samelian (USPN 5562512),

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which each shows a disc or ring having a rope attached, and rebuts Applicant's position regarding the destruction of the prior art.

j) Richards provides an article that is generally shaped like a tire, as is the article of Cooper. The limitations of Claims 26 and 27 are provided by new rejections above under 35 USC 103(a) over Farhi and Mitchell. Note that the limitation drawn to the a tire shape is interpreted broadly and many encompass many articles that are not actually used as tires.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J. Daniels whose telephone number is (571) 272-2450. The examiner can normally be reached on Monday - Friday, 8:00 am - 4:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can be reached on (571) 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MJD 5/13/07

MJD

ck
CHRISTINA JOHNSON
SUPERVISORY PATENT EXAMINER
5/14/07